

Legis. Prog.

August 8, 2012

Memorandum 2012-28

2012 Legislative Program (Status Report)

The attached table summarizes the status of the Commission's 2012 legislative program. The staff will supplement that information orally, if necessary, at the April meeting.

The first part of this memorandum discusses some minor issues relating to Assembly Bill 805 (Torres).

The memorandum concludes by noting a bill that would assign the Commission a new study.

AB 805 (TORRES) — STATUTORY CLARIFICATION AND
SIMPLIFICATION OF CID LAW

Assembly Bills 805 and 806 were introduced by Assembly Member Norma Torres in 2011 to implement the Commission's recommendation to recodify the Davis-Stirling Common Interest Development Act. See *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010).

AB 805 would repeal the existing Davis-Stirling Common Interest Development Act and replace it with a reorganized and improved new statute. AB 806 would correct all statutory cross-references to provisions that would be repealed by AB 805.

There are a few minor issues that need to be considered in connection with AB 805. They are discussed below.

Approval of Supplemental Report

When a Commission-recommended bill is amended during the legislative process, it is sometimes necessary to revise the Commission's official Comments, in order to conform to the effect of the amendment. The revised Comments supersede the Comments in the Commission's published recommendation.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

Revised Comments are memorialized in a supplemental report that is typically published as an appendix to the Commission's Annual Report. The supplemental report is also provided to legislative committees and the Governor, when they are considering the Commission-recommended bill.

A draft supplemental report on AB 805 is attached to this memorandum. Its contents are discussed below.

Previously Approved Revision

The first Comment revision in the draft supplemental report (for proposed Civil Code Section 4205) was already approved at the Commission's June meeting. See draft Minutes (June 2012), p. 3.

Revision Required to Conform to Approved Amendment

A second revision set out in the draft report is required to conform to a technical amendment that the Commission approved at its June meeting. *Id.* The specific effect of the revision is shown below, in strikeout and underscore:

Civ. Code § 4600. Grant of exclusive use

Comment. Section 4600 continues former Section 1363.07 without change, except as indicated below.

...

- Paragraphs (b)(3)(F)-~~(H)~~, (G), and (J) are new.

...

Error Correction

The last revision in the draft supplemental report is required in order to correct an editorial error that the staff made in preparing the recommendation. The specific effect of that revision is shown below, in strikeout and underscore:

Civ. Code § 4730. Marketing restriction

Comment. Section 4730 continues former Section 1368.1 without change, except as indicated below.

...

- The words "rule or regulation" are replaced with "governing document." See Section ~~6552~~ 4150 ("governing documents"). This broadens the application of the section so that it governs any provision in the governing documents and not just an operating rule.

...

Recommendation

The staff recommends that the Commission approve the attached draft supplemental report for publication (contingent on the enactment of AB 805). Prior to publication, the staff would fill in the blanks relating to the bill's "chapter number."

Inclusion of Prior Amendments in Final Recommendation

As discussed in Memorandum 2012-6, AB 805 was amended on January 4, 2012. Among other things, the amendments implemented a number of minor technical changes that had been recommended by legislative staff.

The memorandum stated that those amendments had *not* been implemented in the final version of the Commission's recommendation. See Memorandum 2012-6, p. 7. That statement was accurate as to some of the changes, but inaccurate as to others.

A small number of the amendments were in fact included in the final version of the recommendation. Those changes were:

- A definition was relocated, without substantive effect, from proposed Civil Code Section 4180 to proposed Civil Code Section 4340.
- In proposed Civil Code Section 4705, a superfluous reference to "declaration" was deleted.
- In proposed Civil Code Section 4720, a reference to "common interest development" was replaced with a more technically correct reference to the "association."
- In proposed Civil Code Section 4785, the phrase "in possession *on* the separate interest" was revised to read "in possession *of* the separate interest." (Emphasis added.)
- In proposed Civil Code Section 5960, a provision governing the award of fees and costs in litigation, the term "fees" was revised to read "attorney's fees."

Section 2.7.4 of the Commission's *Handbook of Practices and Procedures* authorizes the staff to make minor technical changes to a recommendation before it is printed. The changes described above fall within the scope of that rule.

Consequently, no formal action is required in connection with those changes. They are described here for informational purposes only.

POSSIBLE NEW STUDY

Assembly Bill 2589 (Bradford) requires the preparation of a specified report on uninsured motorists, by December 31, 2013. The bill was amended on June 28, 2012, to assign that responsibility to the Law Revision Commission. Prior to that amendment, the California Research Bureau would have been required to prepare the report.

The bill currently reads as follows:

SECTION 1. (a) The California Law Revision Commission shall conduct a survey, as described in subdivision (b), in consultation with automobile insurers, consumer attorneys, and the Department of Insurance, and shall report its findings to the Legislature no later than December 31, 2013.

(b) The survey required by subdivision (a) shall compare the key provisions of California's underinsured motorist coverage laws, as specified in Section 11580.2 of the Insurance Code, with the laws of each of the other states in the United States.

(c) In addition to reporting the survey findings, the California Law Revision Commission shall include in its report to the Legislature a discussion concerning the extent of disclosure to California consumers about the operation of California's underinsured motorist coverage as compared to disclosures required by other states.

(d) (1) The report required under this section shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on December 31, 2017.

It is likely that this bill is no longer viable (it was not approved by a Senate policy committee by the June 6 deadline for policy committee action). However, the staff will keep an eye on it, in case the usual rules are waived.

Respectfully submitted,

Brian Hebert
Executive Director

Status of 2012 Commission Legislative Program

As of August 7, 2012

		AB 805	AB 806	AB 1529	AB 2690	ACR 98					
	Introduced	2/17/11	2/17/11	1/23/12	2/27/12	2/2/12					
	Last Amended	6/11/12	1/4/12	3/21/12	4/11/12	4/12/12					
First House	Policy Committee	4/6/11	4/6/11	3/20/12	5/1/12	4/10/12					
	Second Committee	4/26/11	4/26/11	5/8/12	--	4/25/12					
	Passed House	5/2/11	5/2/11	5/14/12	5/14/12	4/30/12					
Second House	Policy Committee	1/10/12	1/10/12	6/19/12	7/3/12	6/12/12					
	Second Committee	6/19/12	6/19/12	7/3/12	--	6/25/12					
	Passed House	7/2/12	7/2/12								
Concurrence		8/6/12	8/6/12								
Governor	Received Approved										
Secretary of State	Date Chapter #										

Bill List: AB 805 (Torres): Statutory Clarification and Simplification of CID Law
 AB 806 (Torres): Statutory Clarification and Simplification of CID Law (Conforming Revisions)
 AB 1529 (Dickinson): Trial Court Restructuring
 AB 2690 (Committee on Judiciary): Statutory Cross-References to "Tort Claims Act"
 ACR 98 (Wagner): Resolution of Authority

Also of Interest:
 AB 2025 (Gorell): Mediation Confidentiality
 AB 2589 (Bradford): Uninsured motorists
 SB 1213 (Walters): Charter schools and the Gov't Claims Act

KEY

Italics: Future or speculative

"—": Not applicable

*: Double referral, not fiscal

[date]: Deadline

DRAFT REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER ____ OF THE STATUTES OF 2012
(ASSEMBLY BILL 805)

Statutory Clarification and Simplification of CID Law

Chapter ____ of the Statutes of 2012 was introduced as Assembly Bill 805, authored by Assembly Member Norma Torres. The measure implements the Commission's recommendation on *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010). The revised Comments set out below supersede the comparable Comments in the recommendation. The revisions correct an editorial error and reflect amendments made to Assembly Bill 805 in the legislative process.

Civ. Code § 4205. Document authority

Comment. Section 4205 is added to clarify the relationship between the law and the most common types of governing documents. Nothing in the section is intended to create an affirmative duty to amend a governing document to delete superseded material.

Subdivisions (a) and (b) of Section 4205 are new.

Subdivision (c) is consistent with Corporations Code Section 7151(c), providing that the bylaws shall be consistent with the articles of incorporation.

Subdivision (d) is consistent with Section 4350(c), providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 4135 ("declaration"), 4150 ("governing documents").

Civ. Code § 4600. Grant of exclusive use

Comment. Section 4600 continues former Section 1363.07 without change, except as indicated below.

The following substantive changes are made:

- The section is no longer limited in its application to a common area that the association owns or in which the association has an easement right. It now also applies to common area that is owned by the members as tenants in common.
- Paragraphs (b)(3)(F), (G), and (J) are new.

The following nonsubstantive changes are made:

- An introductory clause is added in subdivision (b), to introduce the list of exceptions.

- The substance of former subdivision (a)(3)(F) is continued in Section 4202.
- The words “board of directors” are replaced throughout with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

Civ. Code § 4730. Marketing restriction

Comment. Section 4730 continues former Section 1368.1 without change, except as indicated below.

The following substantive changes are made:

- The introductory clause is revised to make clear that a void provision does not void the entire governing document that contains it.
- The words “rule or regulation” are replaced with “governing document.” See Section 4150 (“governing documents”). This broadens the application of the section so that it governs any provision in the governing documents and not just an operating rule.

The following nonsubstantive changes are made:

- The words “his or her” are replaced with “the owner’s” in subdivision (a).
- The phrase “common areas” is singularized.
- The words “of an association” are not continued.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4185 (“separate interest”).